

STATE OF NEW JERSEY

Board of Public Utilities

Two Gateway Center

Newark, NJ 07102

IN THE MATTER OF THE PETITION OF)	<u>ENERGY</u>
ATLANTIC CITY ELECTRIC COMPANY)	
FOR APPROVAL OF THE TRANSFER OF)	FINAL ORDER
NON-UTILITY THERMAL ENERGY)	APPROVING TRANSFER
FACILITIES TO THERMAL ENERGY)	
LIMITED PARTNERSHIP I)	DOCKET NO. EM00060384

(SERVICE LIST ATTACHED)

BY THE BOARD:

By letter petition dated June 27, 2000, Atlantic City Electric Company ("ACE" or "Company") requested approval of the Board of Public Utilities ("Board") to transfer its Bayside Thermal Facility ("Bayside") to Thermal Energy Limited Partnership I ("TELP"). ACE also requested Board approval to lease certain real property on which Bayside is situated to TELP for the remainder of Bayside's useful life. ACE also requested the waiver of any requirements that the Board may find are applicable absent waiver.

The Board, by a vote of three Commissioners at its December 20, 2000 public agenda meeting: (1) granted a waiver of the advertising requirement of N.J.A.C. 14:1-5.6(b); (2) approved the transfer of Bayside to TELP for \$3,499,000; and (3) approved the lease of the property upon which Bayside is situated, between ACE and TELP, for \$3,750 per month, or \$45,000 per year. The Board conditioned its approval of the transfer of Bayside and the related lease on the resolution of an issue raised by Board Staff ("Staff") regarding the appropriate compensation to ACE's customers for the prior use of utility property for non-utility purposes, specifically with respect to the land upon which Bayside is situated, which is in the Company's rate base. The Board directed Staff to initiate informal discussions with the Company to resolve the remaining issue of whether the Company's customers are entitled to additional compensation. The Board further directed Staff to return this matter to the Board's agenda for the initiation of a formal proceeding if Staff and the Company were unable to informally resolve this issue. The Board's determinations in this matter were memorialized in its Order Conditionally Approving Transfer, dated December 17, 2001.

On January 10, 2001, Staff, the Company and the Division of the Ratepayer Advocate ("Advocate") (collectively, "Signatory Parties")¹ conducted an informal discussion concerning the use of utility property for the Bayside facility. Subsequent to the meeting, ACE submitted a

¹ Other parties involved in the informal discussions included NJSEA and ACE's affiliate, Conectiv Thermal Services. However, only the Signatory Parties entered into the Stipulation and Agreement discussed below.

letter dated February 16, 2001, wherein the Company provided additional information regarding the property at issue.

In its letter, the Company asserted that the approximately one acre of land on which the Bayside facility is situated is part of a larger tract of 14.662 acres owned by ACE that once contained a coal-fired generation facility and now contains electric substation equipment and oil-fired combustion turbines. The Company asserted that any subdivision and sale of the property could require environmental remediation of unknown costs. The Company asserted that the potential remediation, the presence of wetlands on the site, and a lack of road access to the Bayside property makes the land unattractive for any other use by any other party. ACE also asserted that there has been no known opportunity presented or lost to use this portion of the site for any purpose other than the construction and operation of the Bayside facility, and that utility operations have not been hindered by the facility's presence.

ACE asserted that the entire tract of land has a book basis of about \$41,000, of which \$11,000 is classified as production-related and \$30,000 is classified as transmission-related. The Company asserted that its recovery from customers for the entire parcel has been no more than \$5,000 annually, based upon the Company's authorized return on equity. ACE further asserted that this amount was further reduced in 1999 when the Company unbundled its rates and removed production-related investment from its regulated rates. Therefore, the Company asserted, the annual lease payment of \$45,000 for the Bayside property far exceeds the amount of costs charged to customers.

ACE asserted that, if some form of compensation for the use of the land had been received, it would not have benefited customers since the compensation would have been received between base rate cases, with the Company's last base rate case having taken place in 1991. Therefore, the Company asserted, any revenues would not have been recognized in rates until rates are reset. The Company lastly asserted that it is prepared to reflect the lease payments in future rates at such time as they are adjusted in a prospective base rate proceeding.

The Company proposed that the matter be addressed at the next regulatory proceeding wherein the Company's retail distribution base rates are reviewed. The Company asserted that, at that time, it would agree to either remove the subject property from its regulated utility property account to a non-utility property account, thereby not allowing the Company to earn a return on its investment in the property or, alternatively, let the property remain in the Company's rate base and use the lease proceeds to reduce customer revenues. ACE also stated that it would not argue, upon approval of the transfer of Bayside, that Staff is precluded from asserting in the aforementioned proceeding that the Company's customers are entitled to compensation for the prior use of utility property. ACE asserted that it would not seek cost recovery of any stranded costs or other costs associated with Bayside, nor would the Company seek any recovery from customers of any future costs or liability associated with the facility or the Service Agreement with the New Jersey Sports and Exposition Authority ("NJSEA").²

Subsequent to the submission of the February 16, 2001 letter, the Signatory Parties continued informal discussions. As a result of these discussions, the Signatory Parties entered into the

² Bayside is primarily comprised of boilers, chillers and related equipment utilized to provide thermal, i.e., heating and cooling, services to NJSEA's convention center located across the street from ACE's property in Atlantic City. The Service Agreement has a term of thirty (30) years, commencing August 1, 1996 and ending August 1, 2026.

attached Stipulation and Agreement ("Stipulation"), dated December 17, 2001. Key elements of the Stipulation are summarized as follows:

1. Beginning with the commencement date of the lease and prior to the next time base rates are reset, the monthly lease payments made by TELP to ACE of \$3,750, or \$45,000 per year, shall be credited against ACE's market transition charge ("MTC") deferred balance. When base rates are next reset, the lease payments shall be taken into account by crediting such amounts for the benefit of customers with the specific methodology, accounting and/or ratemaking treatment to be determined by the Board in the proceeding in which base rates are next reset.
2. ACE will make a one-time credit of \$5,000 to customers with respect to the period from 1993 until the commencement date of the lease.
3. ACE will not seek recovery from customers of any stranded costs or other costs associated with the construction, operation, or the transfer of the Bayside facility either prior to or after the transfer.
4. ACE will not seek any recovery from customers of any future costs or liability associated with the facility or the long-term contract with NJSEA.
5. Upon receipt of a written final, non-appealable Order of the Board approving the proposed transaction with conditions consistent with those set forth above, ACE will finalize and close the transaction to provide the benefits to NJSEA of the renegotiated contract on a basis that would no longer be contingent, interim, or subject to recapture.
6. The Stipulation, once approved by the Board, shall govern and shall be dispositive of all issues related to the transfer of the facility and the lease, including issues related to periods before the closing of the transfer.
7. The provisions or effects of the Stipulation shall not be revisited in any future proceeding except insofar as is necessary to implement the Stipulation.

Discussion and Findings

Having reviewed the record in this matter and the Stipulation among the Signatory Parties, the Board FINDS the provisions set forth in the Stipulation to be reasonable and in the public interest, and resolve the remaining issue of compensation to customers resulting from the prior use of utility property on which Bayside is situated for non-utility use. Accordingly, the Board HEREBY APPROVES the Stipulation and incorporates its terms and conditions as though set forth herein in its entirety.

The Board HEREBY DIRECTS that all monthly lease revenues shall be immediately credited against ACE's MTC deferred balance. The Board FURTHER DIRECTS that the one-time credit of \$5,000 also be credited to the MTC deferred balance at the time of the closing of the transaction. ACE shall notify the Board within five (5) business days of the closing. All other

determinations set forth in the Order Conditionally Approving Transfer shall continue to remain in full effect as though set forth herein in their entirety.

DATED: December 19, 2001

BOARD OF PUBLIC UTILITIES
BY:

(SIGNED)

CONNIE O. HUGHES
PRESIDENT

(SIGNED)

FREDERICK F. BUTLER
COMMISSIONER

(SIGNED)

CAROL J. MURPHY
COMMISSIONER

ATTEST: (SIGNED)

HENRY M. OGDEN
ACTING SECRETARY

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